IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.595 OF 2007

MRS. SEEMA RAO ... PETITIONER.

VS.

UNION OF INDIA AND ORS. ... RESPONDENTS.

S.K.JAIN FOR THE PETITIONER.

R.R.SHETTY WITH MR. N.R.PRAJAPATI FOR RESPONDENTS.

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CORAM : J.N.Patel and A.A.Sayed, JJ.

DATE : July 25, 2007.

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P.C.

1. Heard the learned Counsel for the parties. By consent, we propose to finally dispose of this petition at the stage of admission.

2. The Petitioner has approached this Court seeking writ of mandamus and certiorari challenging the impugned Order, dated 25.9.2006 passed by the Respondent No.3 and a direction to the Respondent for appointment of the Petitioner on compassionate ground on any suitable post, within a stipulated period and also seeks compensation for delay in considering her case for appointment on compassionate ground.

3. The Petitioner's husband late Mulkul N. Rao, Superintendent of Customs, met with a train accident and died in harness on 29.4.1998. On 8.5.1998, the Petitioner applied to the Assistant Commissioner of Customs, Personnel and Establishment Department, Mumbai for giving an appointment on compassionate ground as the Petitioner had two small children and no source of livelihood. The Assistant Commissioner of Customs, Personnel and Establishment Department, rejected the request of the petitioner for compassionate appointment to the post of Examiner/Preventive Officer. The Petitioner then requested the Dy. Commissioner of Customs, Personnel & Establishment Dept. for appointment on compassionate ground and as Petitioner did not receive any response in the matter, she moved to Superior Authorities. On 28.5.1999, the Petitioner

also shown her willingness to be appointed on compassionate ground on the post of clerk/typist. But on 25.6.1999, she was informed that her request for being appointed on compassionate ground as Lower Divisional Clerk/ Typist is not accepted. The Petitioner again made a representation to the concerned Authority, but unfortunately the same was turned down. Therefore, the Petitioner directly approached the Honourable Supreme Court under Article 32 of the Constitution of India, assailing the Order dated 15.7.2004 issued by the Ministry concerned, which was communicated on 13.9.2004. The Supreme Court permitted the Petitioner to withdraw the Petition and to approach this Court, which led to filing of Writ Petition No. 484 of 2007 by the Petitioner. This Court allowed the Petition by directing the Respondents to take decision in the case of the Petition within three months, after reconsidering the case of the Petitioner for appointment on compassionate ground against a suitable post. Pursuant to this Order, the Commissioner of Customs Division Mumbai passed an Order contrary to her claim that compassionate appointment cannot be considered and the case was closed in the light of DOPT OM NO. 14014/19/2002 ESTT.dated 5.5.2003 and Boards Instructions issued

vide F.No.A 12012/67/2004 AD IIIB dated 15.7.2004, according to which all cases of Compassionate Grounds pending for more than three years are to be closed, which is the subject matter of challenge before this Court.

4. The facts are not disputed except that the petition does not qualify for being considered to be appointed on compassionate ground.

5. A preliminary issue was raised before us as to the maintainability of the petition, by the learned Counsel for the Respondents by citing the case of KENDRIYA VIDYALAYA SANGHATAN & ANR. VS. SUBHAS SHARMA ETC. REPORTED IN ALL INDIA SERVICES LAW JOURNAL, VII-2002(2), PAGE 296. It is submitted that an appropriate remedy for the Petitioner would be to approach the Central Administrative Tribunal and this Court should direct the Petition to be transferred to the Central Administrative Tribunal.

6. The learned Counsel appearing for the Petitioner submitted that this preliminary issue was raised at very belated stage and on the earlier occasions, the Respondents have not objected is the jurisdiction of this Court, when the matter was taken

up and disposed by issuing specific directions to the Respondents in the matter of reconsidering the case of the Petitioner for being appointed on compassionate ground.

7. In our view, as so much of time has passed away litigating on the issue, we do not propose to consider the issue of jurisdiction as the petitioner has invoked the Extra Ordinary Jurisdiction of this Court under Article 226 and 227 of Constitution of India, and, therefore, we proceed to consider her case.

8. We have gone through the impugned Order and we find that the Respondents Authority has considered the case of the Petitioner in accordance with the Government Policy in respect of the appointment of the persons on compassionate ground. We do not find that the impugned Order, rejecting the claim of the Petitioner for considering her case for appointment on compassionate ground, has not been dealt with in accordance with the Policy adopted by the Department for appointing persons on compassionate ground. On earlier occasions, when the Petitioner had approached this Court, this Court made an exception in case of the Petitioner, rather than coming to a conclusion

that the decision of the Respondents was improper or illegal or contrary to the Policy in rejecting the claim of the Petitioner. A direction issued by this Court to reconsider her case was just to give one more opportunity to the Petitioner to make out a case for reconsideration before the concerned Authorities. The Authority has, after reconsidering her case, found that the Petitioner is not eligible for being appointed on compassionate ground.

9. We find that the court has a very limited jurisdiction while considering such matters and while examining such cases it can only find whether the decision making process rejecting the application of the petitioner was vitiated or not is not in conformity with the scheme framed by the Department. As we do not find it to be so, we do not propose to interfere with the decision taken by the Respondents.

10. We may also cite the Authority on the subject, which further clarify the principles laid down by the Supreme Court while considering the case for compassionate appointment in a recent decision, rendered in the case of STATE BANK OF INDIA AND ANOTHER VS. SOMVIR SINGH, REPORTED IN (2007) 4 SCC 778.

11. Consequently, the petition is dismissed in limine.

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[J.N.Patel, J.]

[A.A.Sayed, J.]